

MEMORANDUM


THE WHITE HOUSE

WASHINGTON

URGENT ACTION

September 29, 1969

MEMORANDUM FOR MR. KISSINGER

FROM: Helmut Sonnenfeldt *HS/WH* 
SUBJECT: New US Proposal on Seabeds Treaty

Attached at Tab A is ~~an advance~~ copy of instructions to Geneva outlining a new compromise worked out by State, ACDA and Defense. In effect, it buys one-half of the informal Soviet suggestion to move the negotiations off dead center. It leaves ambiguous the most contentious issue, that of defining territorial waters, but rejects the idea of unilateral Soviet declaration renouncing any intention to use its "historic waters" in violation of the treaty.

Our last position defined the zone of exclusion as measured from the low-water mark to the "outer limit of the contiguous zone," in effect 12 miles. The Soviet position was defined as 12 miles measured from the "baseline" used by coastal states.

We now propose that the outer limit of the contiguous zone shall be measured "from baselines drawn as specified in the 1958 Geneva Convention... and in accordance with international law."

The reference to the Geneva Convention is intended to satisfy the Soviets, because the Convention does refer, ambiguously, to claims to historic waters.

The phrase "in accordance with international law" is intended to save our position if and when problems arise in interpreting the excluded zones particularly if the Soviets draw their base lines to exclude their "historic" waters from treaty coverage.

We intend to tell the Soviets that if they act "inconsistently" with the treaty, we will have to invoke the withdrawal clause.

Chances are the Soviets will accept this approach. If, however, they attempt to pin down an understanding that their claims are thereby recognized, then it is likely the treaty will founder.

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ACDA proposed five alternatives to handle this issue (Tab B), and Defense accepted the approach now proposed (Tab C). Judging from the memorandum from Nutter to Farley, Defense will not go much further, and ACDA is not pushing for recognition of Soviet claims.

Unfortunately, if we cannot agree with the Soviets soon, the Committee will adjourn and the other members of the Committee will take the issue into the UN, where we may have a nightmare of proposals.

All things considered, as long as we have gone down the road of these negotiations as far as we have, the proposed approach is probably the one we will have to follow. Later, the Congress may raise some thorny questions and we may face problems with the USSR. ACDA proposes to initiate early briefings and discussion in the Congress once the treaty seems on the tracks. Given the basic decision to negotiate a treaty and the initial US compromise accepted this summer, there seems little alternative to proceeding on the proposed approach.

The other points in the cable to be prepared are non-controversial.

RECOMMENDATION:

That we clear the cable ~~when it arrives~~.

◆ Approve JK Disapprove _____

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DEPARTMENT OF STATE

Washington, D.C. 20520

September 29, 1969

TO: Mr. Henry A. Kissinger
The White House

FROM: S/S - Theodore L. Eliot, Jr. *TE*
Executive Secretary

The attached telegram on the Seabeds Treaty has been approved by Secretary Rogers and by Gerry Smith subject to the President's concurrence. If he concurs, Gerry will want to consult with a few key Senators before the instruction is sent.

Attachment:
Cable to Geneva, NATO
and Tokyo.

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STATE

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SUBJECT: Seabeds Treaty

You should make following presentation to Soviet Co-Chairman ~~no later than September 30~~ as soon as possible.

1. Our proposal presented to Soviet Co-Chairman Sept. 15 was designed to assure equitable balance of obligations and we continue to believe that any effective and durable arms control measure must reflect this key provision of 1961 Joint Statement of Principles.

2. Having in mind the provision of paragraph 2 of Art II (on which we believe there already is agreement), we propose formulation for para. 1 of Art II as follows: "For the]

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COPIES: Hancock
ACDA - Mr. Smith
XXPM - Mr. Spiers (Draft) IO - Mr. Greene (Draft) S/S -
EUR - Mr. Springsteen (Draft) White House -
L - Mr. Stevenson (Draft)
H - Mr. Leahy (Draft) DOD/ISA - Capt. Heg (Draft)

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XXXXX purpose of this Treaty the outer limit of the 7
contiguous zone referred to in Article I shall be measured
from baselines drawn as specified in the 1958 Geneva convention
on the Territorial Sea and the Contiguous Zone and in
accordance with international law." The formulation is
designed to facilitate international agreement on a significant
arms control measure which would be responsive to Article VI
of the NPT, but which would not prejudice the existing rights
or claims of potential parties to a seabeds treaty with respect
to waters whose juridical status in international law is in
dispute.

3. As Soviet Govt is aware, US does not accept claims
asserted by Soviet spokesmen or writers in past regarding
marginal waters off Soviet coasts. Thus we are adopting
the provisions of the Geneva Convention as the basis for
drawing baselines for the purposes of this treaty, with
the understanding that, where there is any question as to how

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~~EXAM~~ that Convention should be applied, or as to 7
situations that are not clearly covered by that Convention,
including disputed waters of any description such as waters
claimed on the basis of so-called "historic title" or under
an archipelago theory of baselines, the baselines shall
be drawn in accordance with international law. We will use
baselines drawn in this manner to determine the area in which
the treaty applies, and to govern our behavior under the
treaty. If other parties act inconsistently with the treaty
as so understood and if consultations between the parties
concerned are unavailing, US might have to go so far as
recourse of withdrawal from the treaty.

4. We have carefully noted suggestion that Soviet Govt
might make statement to effect that USSR would not violate
purposes of treaty on seabed underlying disputed waters.
However, US Govt believes that it would better serve our
mutual interest if no statements are made affecting the
coverage of seabeds with respect to disputed waters, because s

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~~SECRET~~ statements would require counterstatements. 7

5. Regarding Soviet objection to our omission of preambular reference to further negotiations on complete demilitarization of seabed, you should say US does not envision possibility of negotiating such an agreement except in context of GCD. You authorized accept informal suggestion of Deputy Chief Sovdel (para 3, Geneva 3352) as separate preambular paragraph or to combine it with third para of US Sept. 15 proposal as follows:

"Convinced that this treaty constitutes a step towards the exclusion of the seabed, the ocean floor and the subsoil thereof from the arms race, pursuant to a treaty on general and complete disarmament under strict and effective international control, and determined to continue negotiations to this end,"

6. If Soviets continue to object, you authorized to delete word "specifically" from Art I (1) in US Sept. 15 proposal. 1

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WORK: 7. Regarding point raised informally in paragraph 3 of Geneva 3329, you may say, if it is raised again, that emplacement or emplanting of nuclear mines on seabed would be prohibited.

8. US Govt has had difficulty in reaching decision over problem presented by claims of various states, including USSR, to marginal waters which US regards as high seas. We hope the Soviet Govt will agree rapidly to tabling a draft treaty recommended by the Co-Chairmen. We are prepared to do so subject to the views of our allies.

9. After making above presentation you should inform Western Five plus Japan of presentation and, in your discretion, initial Soviet reaction. You should inform allies that we believe our position is consistent with what we believe represents interests of our allies and assume that if Soviets agree to table seabeds on basis of our compromise suggestions, there will be no objection. However, we plan NAC consultation

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DIRECTION

ACTION: as soon as warranted and would appreciate expression Japanese views through Japanese CCD del.

10. FOR USNATO: You should send letter to NATO dels drawing on above on same day presentation made to Soviets. You should coordinate with Ambassador Leonard in Geneva on exact timing. You also should say we would like NAC "green light" to table Co-Chairman draft before CCD as soon as possible. Indicate that if Soviet response favorable, we would possible. For this purpose you should/seek special NAC meeting on October 3.

11. FOR TOKYO: You should fill in Fonoff soonest on above and say we hope GOJ will not object to our tabling draft treaty at CCD if Co-Chairmen agreement reached.

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